IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 300 OF 1998.

1. The Chairman,
   Bombay Port Trust, having his
   office at Vijay Deep, Shoorji
   Vallabhdas Marg, Ballard Estate,
   Mumbai 400 038.

2. The Board of rustees of the
   Port of Mumbai, a body corporate,
   constituted under the provisions
   of the Major Port Trusts Act,
   1963, as amended by the Major
   Port Trusts (Amendment) Act,
   1974, having its principal place
   of business at Vijay Deep,
   Shoorji Vallabhdas Marg, Ballard
   Estate, Mumbai 400 038. ... Plaintiffs.

Versus.

M/s.Damania Shipping Pvt.Ltd.,
a company registered under the
Companies Act 1956, having its
office at 205/206, Varuna Chambers
2nd floor,11, Homji Street, Fort,
Mumbai 400 001. ... Defendant.

Shri U.J.Makhija i/by M/s.Mulla & Mulla, C.B.C. for the Plaintiffs.

None for the Defendant.

CORAM : ABHAY S.OKA, J.

DATED : 20th July, 2007.

ORAL JUDGMENT.:

1. This suit is kept under the caption of "undefended suits for exparte decree". The learned Counsel appearing for the Plaintiff has tendered on record an affidavit of evidence of Shri Ramesh Shivaram Ghadawale, an Administrative Officer of the 2nd Plaintiff. The said affidavit is marked "X" for

identification and is taken on record. The compilation of original documents is marked "Y" (Collectively) for identification and is taken on record. There is no written statement filed by the Defendant.

2. The suit is filed for recovery of various amounts from the Defendant. In the year 1990 the Bombay Docks Labour Board constituted under the Dock Workers (Regulation of Employment) Act, 1948 was in financial difficulty and was unable to pay the workmen on its register who are registered under the Dock Workers (Regulation of Employment) Scheme of 1956. Writ petitions came to be filed in this Court by the affected workmen for claiming wages. After the writ petitions were filed, on 13th December 1991 a memorandum of agreement was arrived at between the 2nd Plaintiff, the Bombay Docks Labour Board, Unions and Bombay Stevedores Association Ltd. A true xerox copy of the said memorandum has been produced by the Plaintiffs.

3. Subsequently on 25th January 1994, a Memorandum of Settlement was entered into whereunder the workmen on the register of the Bombay Dock Labour Board were absorbed by the 2nd Plaintiff. A copy of the said Memorandum is also placed on record. Subsequently, notifications were issued superseding the Bombay Dock Labour Board. By a notification dated 25th February

1994 the employees covered under the schemes of the Bombay Dock Labour Board were absorbed in the employment of the 2nd Plaintiff. There was a wage revision settlement arrived at on 6th December 1994. On the basis of the said settlement, wage arrears for the period from 1st January 1993 to 31st December 1994 were paid by the Plaintiffs to the eligible employees and workers who were the members of the erstwhile Bombay Dock Labour Board which were in turn to be reimbursed by the registered employers including the Defendants.

4. It is the case of the Plaintiffs that the Clearing and Forwarding Agents used to raise indent for supply of registered workers and under the relevant clause of the Clearing and Forwarding Scheme 1983, it was their obligation to pay the arrears of wages to the workers engaged by them. Various Clearing and Forwarding Agents including the Defendants herein availed of the services of the registered workers and thus liable to pay the wages to such workers. Apart from the wages under the revision settlement, the Defendants were also liable to pay arrears of wages. As the Defendants filed to make payment towards arrears, the amounts were paid by the 2nd Plaintiff.

5. According to the case of the Plaintiffs, the aggregate bill amounting to Rs.1,43,940.11 for the

period between 1st January 1993 to 28th February 1994 as per the wage settlement dated 6th December 1994 was raised on the Defendant. A true copy of the said bill has been produced by the Plaintiffs.

6. It is the case of the Plaintiff that as per the directives received from the Central Government dated 11th September 1995, arrears of D.A. were paid to the registered workers for the period from 1st January 1992 to 31st December 1995 and accordingly the Plaintiffs raised bills on Clearing and Forwarding Agents as well as on the Defendants herein. A bill was raised on the Defendants on 10th September 1997 to pay various D.A. arrears amounting to Rs.10,712.28 which was due from the Defendants on account of Dearness Allowance paid to the registered workmen employed by them. A copy of the bill is also placed on record. The particulars of claim as aforesaid are set out in Exhibit E to the plaint.

7. There is no written statement filed by the Defendant. The claim of the Plaintiff has been duly proved by the affidavit in lieu of evidence of Shri Ramesh Shivaram Ghadawale. The documents on which the suit claim is based are also proved by the said witness.

8. The Plaintiffs have prayed for interest at the rate of 18% per annum. There is no contract between the

parties as regards payment of interest. Considering the facts of the case, the interest will have to be fixed at 6% per annum.

9. Hence there will be a decree in terms of prayer clauses (a) and (b) with modification that the interest payable will be at the rate of 6% per annum from the date of suit till payment or realisation.

10. Certified copy is expedited.

Judge.